

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90

**COMMENTS OF  
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

The National Tribal Telecommunications Association (NTTA) provides these comments in support of the Petitions for Reconsideration filed by Mescalero Apache Telecom, Inc. (MATI)<sup>1</sup> and Sacred Wind Communications (SWC)<sup>2</sup> in regards to the Commission’s decision providing operating expense limitation relief to certain carriers serving Tribal areas.<sup>3</sup>

NTTA consists of Tribally-owned communications companies and broadband providers including Cheyenne River Sioux Telephone Authority, Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., Hopi Telecommunications, Inc., Mescalero Apache Telecom, Inc., Saddleback Communications, San Carlos Apache Telecommunications Utility, Inc., Tohono O’odham Utility Authority, and Warm Springs Telecom, as well as associate members Nez Perce Tribe and Sacred Wind Communications. NTTA’s mission is to be the national advocate for telecommunications service on behalf of its member companies and to provide guidance and

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<sup>1</sup> Petition for Reconsideration filed by Mescalero Apache Telecom, Inc., filed May 30, 2019 (*MATI Petition*)  
<sup>2</sup> Petition for Reconsideration filed by Sacred Wind Communications, Inc., filed May 31, 2018 (*SWC Petition*)  
<sup>3</sup> *In the Matter of Connect America Fund*, Report and Order, WC Docket No. 10-90 (FCC 18-37, rel. April 5, 2018) (*Tribal Opex R&O*)

assistance to members who are working to provide modern telecommunications services to Tribal lands.

NTTA files these comments in support of the MATI and SWC *Petitions*. Both parties are NTTA members, and the Commission's decision to "increase the amount of operating costs that carriers that predominantly serve Tribal lands can recover from the universal service fund" is largely driven by a proposal NTTA first made in 2016. While NTTA appreciates the Commission's decision to provide relief for the operating expense limitation for certain carriers serving Tribal areas, the petitioners are correct in requesting reconsideration of the decisions made in the *Tribal Opex R&O* for the reasons noted in each Petition.

## **I. BACKGROUND**

NTTA first proposed relief of the operating expense limitations imposed by the Commission for certain carriers predominantly serving Tribal areas.<sup>4</sup> NTTA proposed to "waive or significantly modify the operations expense rule for carriers that are predominantly Tribal (greater than 75% of locations on Tribal lands)."<sup>5</sup> NTTA, and member Gila River Telecommunications, Inc. (GRTI), advocated numerous times for this relief, basically in the form originally proposed.<sup>6</sup>

In the *Tribal Opex R&O*, the Commission granted relief to five carriers based on a revision of the operating expense limitation formula to recognize a range of 2.5 standard deviations above the regression-based expense amounts, instead of the original 1.5 standard deviations range.

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<sup>4</sup> See NTTA Comments filed in WC Docket No. 10-90 on May 12, 2016.

<sup>5</sup> NTTA Ex Parte communication, filed in WC Docket No. 10-90 on September 16, 2016

<sup>6</sup> See *e.g.*, NTTA Reply Comments filed June 13, 2016 in WC Docket No. 10-90; NTTA September 16, 2016 Ex Parte communication; NTTA and GRTI February 9, 2017 Ex Parte communication

While this does not completely remove the effect of the operating expense limitation for any carrier, it does provide additional resources, in the form of increased High Cost Loop Support (HCLS) and Connect America Fund Broadband Loop Support (CAF BLS). These resources are desperately needed in rural Tribal areas, both to expand availability of quality, high-speed broadband services and to provide support for the higher-than-normal costs of operations and maintenance of broadband-capable networks in Tribal areas.

Unfortunately, the Commission's decision goes beyond anything NTTA proposed when it places conditions on the receipt of operating expense limitation relief. First, relief only goes to carriers that have not deployed 10/1 Mbps broadband service to 90% or more of the housing units on the Tribal lands in its study area (90% condition). Second, operating expense limitation relief will not go to areas where unsubsidized competitors provide service to 85% or more of the housing units on the Tribal lands in the carrier's study area.<sup>7</sup> As succinctly stated in the *MATI Petition*, these conditions were not adopted pursuant to any record gathered during the proceeding, and there was "no notice that the Commission was considering imposing *any* conditions on opex relief for carriers on Tribal lands."<sup>8</sup>

Partly because of the Commission's conditions added to the receipt of operating expense limitation relief, only five carriers qualified.<sup>9</sup> Left off the list of carriers receiving relief were MATI and SWC. MATI's exclusion did not go unnoticed by Chairman Pai:

"The Agreement we were able to reach – the agreement reflected in this order – thus doesn't help certain carriers that my original proposal would have benefited, such as Mescalero Apache Telecom, Inc. in New Mexico."<sup>10</sup>

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<sup>7</sup> *Tribal Opex R&O* at 7

<sup>8</sup> *MATI Petition* at 2-3

<sup>9</sup> *Tribal Opex R&O*, Appendix D

<sup>10</sup> *Id.*, Statement of Chairman Ajit Pai, Approving in Part and Concurring in Part

As a result of being excluded from operating expense limitation relief, and considering the dire need for additional support for higher-than-normal costs as documented on the record in this proceeding<sup>11</sup>, MATI and SWC filed for reconsideration of the *Tribal Opex R&O*.

## II. NTTA SUPPORTS THE MATI AND SWC PETITIONS FOR RECONSIDERATION

NTTA supports the MATI and SWC Petitions and the requests to present evidence refuting the apparent finding in the *Tribal Opex R&O* that neither company was eligible for relief due to being over 90% deployed with 10/1 Mbps broadband service. Each carrier presents a different method for refuting the 90% condition and the Commission should accept the methods presented by each carrier and provide the relief sought. In addition, NTTA will further comment on SWC's request to reconsider the 90 percent condition below.

MATI seeks reconsideration of the 90% condition being applied on the grounds that it has not deployed 10/1 Mbps broadband service to the requisite number of locations in its service area. MATI states the Commission's *Tribal Opex R&O* "fails to recognize that FCC Form 477 data may not reflect actual deployment, and thus may not accurately reflect whether a carrier has satisfied the 90 percent condition."<sup>12</sup> In support of its position, MATI goes on to state:

"MATI's current Form 477, which has been correctly filed per the Form 477 instructions, indicates that it provides 10/1 Mbps connectivity to 95 percent of the locations in its service area. However, based on a detailed assessment of MATI's actual deployment using industry accepted engineering principles and select speed tests at actual locations, MATI has determined that it is not currently able to deliver 10/1 Mbps connectivity to 90 percent of the housing units in its service area, and thus should be eligible for opex relief."<sup>13</sup>

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<sup>11</sup> See e.g., NTTA Reply Comments, filed June 13, 2016 in WC Docket No. 10-90 at 2-3

<sup>12</sup> MATI Petition at 3

<sup>13</sup> *Id.*, at 4

MATI goes on to present an array of supporting data that should prove beyond any reasonable doubt that it should not be subject to the 90 percent condition adopted in the *Tribal Opex R&O* and should thus receive relief from the operating expense limitation as outlined in that order.

SWC first states that, using the same data purported to be used by the Commission in the *Tribal Opex R&O*, it has not deployed 10/1 Mbps broadband service to 90 percent or greater of the housing units in its service area.<sup>14</sup> Based on this information alone, the Commission has the basis for reconsidering the *Tribal Opex R&O* as to SWC. However, SWC also recommends the Commission consider an alternative source of information – the location data per funded census block from the Alternative Connect America Cost Model (ACAM) – to more accurately determine its 10/1 Mbps broadband deployment status.<sup>15</sup>

NTTA supports both Petitions in that they provide sufficient credible evidence that neither company should be subject to the 90 percent condition.<sup>16</sup> Furthermore, NTTA agrees with the position that “to ensure fair administration of the 90 percent condition, MATI asks that the Commission provide carriers on Tribal lands with a procedural vehicle through which they can demonstrate that their actual level of deployment differs from their Form 477 data, and that they should therefore be deemed eligible for opex relief (assuming their actual deployment satisfies the 90 percent condition).”<sup>17</sup> While Form 477 and certain United States Census data can provide a useful look into Tribal areas and where broadband service is likely being deployed, used, and

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<sup>14</sup> *SWC Petition* at 6

<sup>15</sup> *Id.*, at 7

<sup>16</sup> Additional consideration should be given to petitions presenting data relating to actual broadband deployment to locations, as opposed to the methods currently used in Form 477 reporting.

<sup>17</sup> *MATI Petition* at 5

where it is absent, it is indisputable that nothing can or should replace the facts on the ground. Thus, if the Commission retains the 90 percent condition, the Commission should allow MATI, SWC, and other carriers to present evidence that demonstrates that 10/1 Mbps broadband service has not been deployed to 90 percent of the housing units located in the carrier's service area.

### **III. NTTA SUPPORTS SWC'S REQUEST TO RECONSIDER THE 90 PERCENT CONDITION**

SWC asks the Commission to reconsider adoption of the 90 percent condition, stating this condition was added "without notice, opportunity for comment, or the other processes normally associated with a decision such as this."<sup>18</sup> SWC adds "at no point did the Commission suggest that the condition for such relief would be tied to criteria related to a carrier's deployment of broadband services in its study area..."<sup>19</sup>

NTTA agrees with SWC's statements and likewise supports its request to reconsider adoption of the 90 percent condition. As stated in MATI's petition, "MATI's need for opex relief is actually greater than that of carriers with lower deployment levels. In effect, the 90 percent condition punishes MATI and other carriers like it for doing exactly what the Commission presumably wants them to do – deploy broadband services as widely as possible in unserved and underserved areas – and it provides a disincentive for achieving deployment beyond 90 percent."<sup>20</sup> The points made by SWC and MATI are well stated and should be taken into consideration by the Commission. Also, and as NTTA stated in recent comments to the

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<sup>18</sup> *SWC Petition* at 3

<sup>19</sup> *Id.*, at 4

<sup>20</sup> *MATI Petition* at 3

Commission, “the condition tied to broadband deployment does not logically relate to the level of operating expenses incurred in a given area. Instead, operating expenses are a function of operating and maintaining the network in place, providing customer service, performing billing functions, and engaging in the overall management of the company. These expenses would be incurred, and at a higher level in Tribal areas, regardless of the percent of 10/1 Mbps deployment in an area.”<sup>21</sup>

### **CONCLUSION**

NTTA supports the Petitions for Reconsideration of the Commission’s April 5, 2018 Report and Order providing operating expense limitation relief to certain carriers serving Tribal areas filed by Mescalero Apache Telecom, Inc. and Sacred Wind Communications, Inc. Specifically, NTTA supports each Petitioner’s request to reconsider the finding that the 90 percent condition applies, and thus each should be eligible to receive the operating expense relief afforded in the Report and Order. Furthermore, NTTA supports the request to reconsider the 90 percent condition made by Sacred Wind.

Respectfully Submitted,

Ruben Hernandez  
*Vice President*  
**National Tribal Telecommunications Association**

July 23, 2018

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<sup>21</sup> NTTA Comments filed May 25, 2018 in WC Docket No. 10-90, at 8